GUTHRIE SDN. BHD.

v.

TRANS-MALAYSIAN LEASING CORP. BHD.

SUPREME COURT, KUALA LUMPUR
HASHIM YEOP SANI CJ (MALAYA)
MOHD. AZMI SCJ
AJAIB SINGH SCJ
[SC CIVIL APPEAL NO. 520 OF 1988]
11 OCTOBER 1990

CONTRACT: *Dealer sells to purchaser who hires machines to hirer - Distributor refuses to release machines to purchaser - Property registered in hirer's name - Purchaser's ownership endorsed in log books - Legal relationship between distributor and purchaser.*

The appellants G were the sole agents and distributors of two heavy machines A and B. The respondents T had purchased the machines from U as dealers and under a hire-purchase transaction with Z and had hired the machines to Z. The machines were delivered to G; G however refused to release the machines to T, claiming that they had not been paid and therefore had an unpaid seller's lien. T sued for the return of the said two machines. The machines were registered in the name of Z with the ownership claim endorsed for T in the log books of the machines. G counterclaimed. The High Court allowed T's claim; G appeals.

There was another agreement entered into between T and another leasing company C whereby if Z defaulted, C had to indemnify T for the loss. The issue for determination was the actual legal relationship between G and T.

Held:

[1] The agreement between T and C was not relevant for the purpose of determining this appeal since C was never the real vendor of the machines but only an introducer of clientele; C is not a party to the suit.

[2] The learned trial Judge had before him, only the evidence adduced on behalf of T and documents produced by them which speak for themselves; possession of these documents resulted in the conclusion of Z being the registered owner of the machines and T endorsing the claim of ownership on 6 February 1980; after payment of RM400,000 on the invoices of U, Z assumed the responsibility to pay off the instalments.

[3] (a)The defence did not call witnesses who could have given evidence as to the actual transactions involving the two machines; the learned trial Judge was correct in invoking s. 114(g) of the Evidence Act 1950 against G.

(b) No evidence was adduced by G to show that the documents tendered were forgeries; all these documents went into the agreed bundle of documents and no objection was raised at any stage of the proceeding.

(c) The surrounding circumstances of this case clearly indicate that the property was intended to pass at time of contract between T and Z; the fact that the documents passed through U to C to T is immaterial.

[Appeal dismissed.]

Legislation referred to:
Evidence Act 1950, s. 114illus.(g)

For the appellants - Matthias Chang; M/s. Suhaimi, Khor, Zulkifle & Chang
For the respondents - R.R. Sethu; M/s. Khoo & Sidhu

JUDGMENT

Hashim Yeop Sani CJ (Malaya):

The claim of the respondents/plaintiffs in the Court below arose out of a transaction involving two heavy machines being one Kawasaki Super Shovel (Engine No. 506431, Serial No. KLB 80-3325, Model KS 80) and Ursus Peroni Motor Graders (Model UP 120/A, Engine No. 60004323, Serial No. 006385) bearing registration No. WU 3566 and WU 3564 respectively. According to the statement of claim the appellants/defendants were the sole agents and distributors of these two vehicles and this was in fact admitted in para. 2 of the statement of defence.

The transaction was a simple hire purchase transaction between a company called Zarad Construction Sdn. Bhd. (Zarad) and the respondents. There was default under the hire purchase agreement (Exhibit P15). Behind the scene was however another agreement between the respondents and another leasing company called Colossal High Leasing Sdn. Bhd. (Colossal) which was a back to back arrangement whereby if Zarad defaulted Colossal had to indemnify the respondents to the full extent of the losses. Although Counsel for the appellants urged us to place importance on this arrangement (between the respondents and Colossal) we do not think it is really relevant for the purpose of determining the appeal since we agree with the finding of the learned Judge that Colossal was never the real vendor of the machines but only an introducer of clientele.

Pursuant to the hire purchase agreement the machines were delivered to the appellants on 6 October 1980 which delivery was acknowledged. The appellants however refused to release the machines to the respondents claiming that they had not been paid and therefore had an unpaid seller's lien. Thus the action in the High Court.

Although the background of the transaction was made complicated by the presence of other companies who are not parties to the suit namely Colossal, Zarad and Uni-East Malaysia Sdn. Bhd. (Uni-East) and Zamani and Company, the issue to be decided by the learned Judge was only the actual legal relationship between the appellants and the respondents. The respondents as plaintiffs were suing for the return of the said two machines or their value to be assessed and damages. It was agreed apparently that the value of the machines be set at RM400,000 which was accepted by the learned Judge.

The claim of the respondents as stated in the statement of claim was simple. They had purchased the machines from Uni-East as dealers and the plaintiffs had hired the said machines to Zarad. The said machines were registered in the name of Zarad with the ownership claim endorsed for the plaintiffs in the log books of the vehicles.

At the hearing before the learned Judge an official from the RIMV Wilayah Persekutuan (PW1) produced the records of the machines WU 3564 and WU 3566. It was shown they were new vehicles registered in the name of Zarad with ownership claimed by the respondents. The documents produced by the official were:

Exhibit P1A/P2A - Customs Forms No. 1;
Exhibit P1B/P2B - Photocopies of Form 9;
Exhibit P1C/P2C - Forms MVI;
Exhibit P1D/P2D - Notifications of hire purchase;
Exhibit P1E/P2E - Letters from Guthrie requesting registration.

It is clear from the documents that the distributors of the machines were the appellants, Guthrie Sdn. Bhd. as appellants were known then, who imported the vehicles. Documents P1A/P2A to P1E/P2E are the usual documents required from the distributor before vehicles are registered.

Before the learned trial Judge two other witnesses were called on behalf of the plaintiffs. They were PW2, manager of the respondent company at the material time and PW3, the Managing Director of Colossal. PW3 was called to confirm the undertaking by Colossal to make good to the respondent any default in the payments under the hire purchase agreement. Beyond noting this we do not think that it would be the concern of this Court to establish anything else because Colossal is not party to the suit. Whatever arrangement between Colossal and the respondents is entirely left to them.

On behalf of the appellants only the divisional manager of Mulpha Engineering gave evidence. At the material time DW1 was a sales executive of the appellants.

From the custody of the respondents and Colossal the following documents were produced to the Court:

(1) A dealers master agreement between TML and Colossal dated 4 February 1980 (Ex. P3).

(2) A proposal form from Zarad and Colossal to TML to purchase each vehicle dated 9 February 1990 (Ex. P9, P10).

(3) Invoices dated 8 February 1980 from Uni-East for each vehicle (Ex. P11 & P12).

(4) The original registration books for each vehicle with ownership claim by TML endorsed thereon on 6 February 1980 (Ex. P13, P14).

(5) The HP agreements each dated 9 February 1980 executed by Zarad and TML (Ex. P15 & P16).

(6) Two delivery receipts executed by Zarad acknowledging it had taken physical delivery of the goods dated 9 February 1980 (Ex. P17 & P18).

The learned Judge came to what he called "irrefutable conclusion" arising from these documents that possession of these documents enable a person not only to have Zarad as the registered owner of the two machines but also to have the claim of ownership by respondents endorsed on 6 February 1980. By 9 February 1980 the registration books of the two vehicles were already delivered to the respondents in exchange for the payment of RM400,000 on the invoices of Uni-East and Zarad now assumed the responsibility as hirers to pay off the instalments under the hire purchase agreement.

In the statement of defence the appellants denied that Uni-East was acting as their agents and that the dealers had neither authority nor consent to represent themselves as agents or otherwise of the appellants. Finally it was alleged in the statement of defence that any transfer of ownership if at all was effected unlawfully and was made fraudulently by the respondents or the dealers. The appellants also counterclaimed for general damages for conversion.

It must be appreciated in this case that the learned trial Judge had only the evidence adduced on behalf of the respondents and documents which speak for themselves. DW1 had no personal knowledge of what went on in respect of the transaction involving the two machines. It was not disputed that an important official of the appellants involved in the transactions was in fact one Bart Chew who signed the documents P1E and P2E. DW1 also stated that Mr. Mah Kim, the financial controller of the appellant company must also sign the certificate but Mr. Mah Kim was not called to give evidence. Another person who should also have first hand knowledge of the transaction was one Mr. Lazar Fredericks who was the credit controller of the appellant company at the material time. Mr. Lazar Frederick's duty was to monitor the payments and to chase customers for money in respect of equipments sold by the appellants. He was also not called to give evidence.

No reasons were given why all these persons were not called to give evidence. The learned trial Judge invoked s. 114(g) of the Evidence Act against the appellants and we think he was quite correct under the circumstances to do so.

No evidence was adduced by the appellants in the Court below to show that the documents tendered were forgeries. Indeed all these documents went into the agreed bundle of documents and no objection was raised at any stage of the proceeding.

The learned Judge allowed the claim and dismissed the counterclaim. The surrounding circumstances of this case clearly indicate that the property was intended to pass at time of contract between the respondents and Zarad. It was not disputed that one Zamani (director of Zarad) wanted to raise finance from the respondents on hire purchase. The documents referred to were handed by Zamani for that reason and to obtain registration. The fact that the documents passed through Uni-East to Colossal to respondents is immaterial.

The appeal is accordingly dismissed with costs. Deposit to respondents to account of taxed costs.

Also found at [1991] 1 CLJ 9